STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

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TO PARTIES OF RECORD IN RULEMAKING 04-04-026

This is the proposed decision of Administrative Law Judge (ALJ) Burton W. Mattson. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the proposed decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

Parties to the proceeding may file comments on the proposed decision as provided in Article 14 of the Commission's Rules of Practice and Procedure (Rules), accessible on the Commission's website at www.cpuc.ca.gov. Pursuant to Rule 14.3, opening comments shall not exceed 15 pages.

Comments must be filed either electronically pursuant to Resolution ALJ-188 or with the Commission's Docket Office. Comments should be served on parties to this proceeding in accordance with Rules 1.9 and 1.10. Electronic and hard copies of comments should be sent to ALJ Mattson at bwm@cpuc.ca.gov and ALJ Simon at aes@cpuc.ca.gov and the assigned Commissioner. The current service list for this proceeding is available on the Commission's website at www.cpuc.ca.gov.

/s/ ANGELA K. MINKIN
Angela K. Minkin, Chief
Administrative Law Judge

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Attachment

Decision **PROPOSED DECISION OF ALJ MATTSON (Mailed 5/22/2007)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement the California Renewables Portfolio Standard Program.	Rulemaking 04-04-026 (Filed April 22, 2004)

OPINION ON PETITION FOR MODIFICATION OF DECISION 04-06-014 REGARDING PROCESS FOR CHANGING, AND LIFTING RESTRICTIONS ON, DESIGNATED STANDARD TERMS AND CONDITIONS

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OPINION ON PETITION FOR MODIFICATION OF DECISION 04-06-014 REGARDING PROCESS FOR CHANGING, AND LIFTING RESTRICTIONS ON, DESIGNATED STANDARD TERMS AND CONDITIONS

1. Summary

In 2004, the Commission adopted a limited set of standard terms and conditions (STCs) to be used in contracts executed to procure electricity pursuant to the California Renewables Portfolio Standard (RPS) Program. (Decision (D.) 04-06-014.) We specified that some STCs are subject to modification by parties while others are not. Two parties jointly file a petition for modification of D.04-06-014. Petitioners seek clarification of the process for changing STCs. Petitioners also seek reversal of our determination that some STCs are non-modifiable. The petition is granted with respect to providing clarification, and denied in all other respects. The proceeding is closed.

2. Procedural Background

On June 9, 2004, we adopted STC for contracts pursuant to the RPS Program. (D.04-06-014.) On February 1, 2007, Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE) jointly filed a petition for modification of D.04-06-014. On February 28, 2007, responses to the petition were filed by Independent Energy Producers Association (IEP) and the Center for Energy Efficiency and Renewable Technologies (CEERT). IEP supports the petition, while CEERT supports the petition in part. On May 17, 2006, petitioners requested permission to reply to the responses. (Rule 16.4(g) of the Commission's Rules of Practice and Procedure (Rules).) Given that the proposed decision was ready to be filed within days, the request was denied on May 18, 2007.

3. Timeliness of Petition

A petition for modification must be filed within one year of the effective date of the decision proposed to be modified. If filed later, the petition must explain why it could not have been presented within one year. The petition may be summarily denied if the late submission is not justified. (Rule 16.4(d).)

Even though the petition was filed more than two and one-half years after the STCs' decision, we find the petition to be timely for the following reasons. Petitioners persuasively explain that the issues for which they now seek clarification and modification have developed over time through experience with the RPS Program. They correctly point out that we anticipated the possibility of later refining initial contract language as parties and the Commission gained experience. (D.04-06-014, p. 6.) The experience within the first year had not ripened the issue sufficiently, in contrast to the situation more than two and one-half years later.

Moreover, CEERT points out that related issues were presented during review of the 2007 RPS procurement plans and, given that the petition had been filed, we deferred consideration to our decision here. PG&E proposed there, for example, that certain changes to non-modifiable STCs be permitted through the advice letter (AL) process, and that this procedure be affirmed within the context of accepting its 2007 Plan. We deferred the matter to this decision. (D.07-02-011, pp. 45-46.) SCE proposed certain changes to STCs in its pro forma (model) agreement. We withheld judgment on treatment of modifications to STC for our decision here. (Id., pp. 50-52.) Thus, given that the issue of the procedure to change STCs has matured over time, and arisen in the context of our review of the 2007 RPS procurement plans, the petition is timely.

4. Development of STCs and Changes to STCs

The RPS legislation requires that the Commission shall adopt STCs to be used by all electrical corporations in contracting for eligible renewable energy resources. (§ 399.14(a)(2)(D).[1]) The development of these STCs has been the subject of extensive work. The work began in 2003, and has continued into 2007. A description of that process will provide useful background in which to understand the petition.

4.1. Initial Work in 2003 and 2004

In July 2003, we addressed the issue and declined to adopt an interpretation of the legislation that would have required a complete, comprehensive, standardized contract. Rather, we adopted a more limited interpretation and application of STCs. We granted the request of CEERT and SCE for parties to have further opportunity to negotiate particular STCs and language. (D.03-07-061, pp. 55-59, Ordering Paragraph (OP) 27 and 28.)

In September 2003, Energy Division conducted workshops in an effort to facilitate negotiations among parties. Parties did not reach agreement. In October 2003, the Administrative Law Judge (ALJ) ordered that parties file briefs to identify the terms and conditions to be standardized.

By joint ruling dated March 8, 2004, the assigned Commissioner and ALJ identified 26 terms and conditions to be standardized; proposed some as "may be modified" and some as "may not be modified"; and ordered a further round of briefs to propose specific language for each of the 26 STCs. A settlement

[1] All statutory references are to the Pub. Util. Code unless noted otherwise.

conference was held on April 21, 2004, but parties were unable to reach agreement.

A proposed decision was issued in May 2004, on which parties filed comments and reply comments. In June 2004, we adopted 14 STCs in D.04-06-014, some being modifiable by parties and others not, as summarized below:

LIST OF STANDARD TERMS AND CONDITIONS
(D.04-06-014, Appendix A)

LINE No.	STCs No.	ITEM	MODIFIABLE	
			Yes	No
1	1	CPUC Approval		X
2	2	Definition and Ownership of RECs		X
3	3	SEP Awards, Contingencies		X
4	4	Confidentiality	X [1]	
5	5	Contract Term		X
6	6	Eligibility		X
7	7	Performance Standards/Requirements	X	
8	8	Product Definitions	X	
9	9	Non-Performance or Termination Penalties and Default Provisions	X	
10	12	Credit Terms	X	
11	15	Contract Modifications	X [2]	
12	16	Assignment		X
13	17	Applicable Law		X
14	18	Application of Prevailing Wages	X	

[1] May be modified to permit additional disclosure only.
[2] May modify only those terms that are modifiable.

Thus, rather than adopt an entire, complete, standardized contract, and rather than adopt potentially hundreds or dozens of individual STCs, we narrowed the number from 26 identified by the assigned Commissioner and ALJ

to a more limited set of 14. The adopted STCs are largely based on the proposal of CEERT Parties,[2] which we described as:

> "…an integrated one, where the contract terms and conditions are intended to work together. In general, such an approach is preferable to an agglomeration of disparate terms and conditions selected in a mix-and-match fashion from a range of parties, which can sometimes result in confusion and inconsistency." (D.04-06-014, p. 5.)

That is, we adopted an integrated but limited set of 14 STCs to avoid creating a market that could result in confusion and inconsistency.

As envisioned by the assigned Commissioner and ALJ, we also balanced the desire for flexibility with the need for some uniformity:

> "Given the potential variety of future contracts and parties, a rigidly standardized contract that cannot be modified will undoubtedly create problems for someone at some point. On the other hand, if everything is negotiable, the fundamental idea of standard terms and conditions could be rendered meaningless. Particular language could be called 'standard,' but if it is regularly negotiated out of contracts, it is no longer truly standard." (March 8, 2004 Joint Ruling, p. 4.)

We struck a balance and provided considerable flexibility, but elected not to ultimately render the 14 STCs meaningless. We did this by making a subset of the 14 not subject to being "regularly negotiated." That is, a few terms are not generally subject to modification.

The May 2004 proposed decision did not identify which STCs could be modified by negotiation of parties, and which could not, even though the

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[2] CEERT Parties are CEERT, PG&E, IEP, San Diego Gas & Electric Company, and The Utility Reform Network.

March 8, 2004 joint ruling had proposed this differentiation. CEERT Parties (which includes PG&E), SCE and CalWEA Parties[3] brought this to our attention in comments on the proposed decision. As a result, our adopted decision specifically provided that some terms are non-modifiable. (D.04-06-014, p. 16.)

Parties did not at the time clearly raise, and the decision did not specifically address, the issue of future changes. Our intention, however, was to adopt "year one" STCs in order to get the process moving. We were open to considering changes over time but, consistent with typical Commission practice, the items were adopted until specifically and knowingly modified.[4] As discussed more below, we affirmed this view in a subsequent decision.

4.2. Extending STCs to All Contracts

We gave further consideration to STCs in 2006, and adopted four non-modifiable STCs for contracts between RPS projects on the one hand and either energy service providers (ESPs) or community choice aggregators (CCAs) on the other. (D.06-10-019, OP 20.) In doing so, we said that it is obvious all contracts for RPS-eligible generation must have some standard terms (D.06-10-019, pp. 32-33.):

> "We think it is obvious, however, that all contracts for RPS-eligible generation (whether with large utilities, small utilities, multi-

[3] CalWEA Parties are the California Wind Energy Association (CalWEA), the California Biomass Energy Alliance, and Vulcan Power Company. (D.04-06-014, pp. 1 and 3.)

[4] For example, once rates are found just and reasonable they typically remain so until found otherwise and adjusted accordingly. Similarly, once a certificate of public convenience and necessity is granted it typically remains effective unless and until (a) challenged and revoked, or (b) its term expires pursuant to the original provisions of the certificate.

> jurisdictional utilities, ESPs, or CCAs, and no matter what their duration) must ensure that RPS buyers and sellers are buying and selling the same thing, with the same environmental attributes, for approved contractual periods, with the same legal requirements related to basic contractual elements. The non-modifiable terms and conditions were originally adopted to encourage statewide consistency and transparency of contracts that were the result of utilities' solicitations for RPS procurement. These goals remain valid for contracts for RPS procurement that are not the result of utility solicitations or bilateral utility contracts.[54] We therefore will require, until further notice, that all RPS contracts of non-utility LSEs [load serving entities] include the following sections from Appendix A to D.04-06-014 :
>
> a. Definition of ownership of RECs [renewable energy credits];
> b. Eligibility;
> c. Assignment;
> d. Applicable law.
>
> _____
>
> [54] Utilities' RPS contracts remain subject to D.04-06-014, unless and until revisions to the standard terms and conditions are made."

In reaching this order with respect to LSEs other than utilities, we narrowed the number of required STCs from the six determined necessary by the ALJ to four. Nonetheless, we specifically decided that certain STCs must apply not only to utility contracts but all RPS contracts. We determined that this applies not only to contracts executed as a result of a solicitation but also via bilateral negotiation. (See D.06-10-019, Finding of Fact 25, Conclusion of Law 19, OP 20.) Our point is that some non-modifiable STCs are so important we do not permit individual bilateral contracts to deviate from this limited set of STCs for

the purposes of RPS compliance, whether by utilities or other LSEs.[5] And importantly, we specifically said the STCs in D.04-06-014 apply "unless and until revisions…are made."

4.3. Changes to STCs Due to Senate Bill 107

In September 2006, the large investor-owned utilities (IOUs) submitted model procurement contracts within their 2007 procurement plans for our review. Also in September 2006, Senate Bill (SB) 107 was signed by the Governor (to become effective January 1, 2007). In November 2006, the ALJ directed parties to address what changes, if any, would be required in the model contracts as a result of SB 107. Based on proposals and comments, in February 2007, we ordered that certain changes be made in the model contracts to conform with provisions of SB 107. These included a specific definition for REC, a modified STCs 2 (regarding "Definition and Ownership of RECs"), and modified contract language on release of certain project information. (D.07-02-011, pp. 38-45, OP 2.)

4.4. Future Modifications to STCs

The issue of the time and method to change STCs, including changes (if any) to non-modifiable STCs, became more focused in late 2006 with the filing of certain ALs for Commission consideration and approval. The contracts in a few cases contained changes to non-modifiable STCs. Energy Division recommended that some ALs be converted to applications for more formal consideration. (See, for example, Application (A.) 07-01-002 and A.07-01-003.)

[5] Such contracts may still be executed and, if they meet other requirements, may still count for resource adequacy or other purposes, but not RPS compliance.

As noted above, the issue was also presented by large IOUs in late 2006 during review of the IOUs' 2007 RPS procurement plans. PG&E proposed that changes to non-modifiable STC be permitted through the AL process. SCE proposed adoption of changes to both modifiable and non-modifiable STCs in its 2007 procurement plan model contract. SCE stated that if such changes were not allowed, it would need to publicly state it would be unable to enter into its own model contract. The issue was also brought into focus by SB 107, as well as the February 1, 2007 joint petition for modification.

5. Requested Relief

Petitioners now seek three forms of relief:

a. Clarification that RPS-obligated entities may propose changes in STCs as part of the review of their annual RPS Procurement Plans,

b. Lifting of all current restrictions on negotiation of designated STCs, and

c. Clarification that all RPS contracts should be submitted by AL for approval through Commission resolution.

While we address each requested relief separately below, we first comment on the larger context of the requests. The larger context is understood through our experience with recent ALs and issues presented during review of the 2007 Procurement Plans (e.g., considering STCs for model contracts to be used for the 2007 RPS solicitation). It is most clearly discerned through the second request above, where we are asked to grant unlimited flexibility in STCs, both in the initial language to be used for modifiable STCs and specific language for the non-modifiable STCs. We decline to adopt such broad flexibility.

CEERT correctly says that the law requires us to adopt "…standard terms and conditions to be used by all electrical corporations in contracting for eligible renewable energy resources…" (§ 399.14(a)(2((D).) The requirement is not permissive. We have not interpreted the law to require a complete, fully standardized contract, but a more limited set of STC. We continue to adhere to this interpretation.

We have been and remain open to changes in the RPS program, including improvements in contract language. This might include changing the number of STCs from 14, changing the initial language for those STCs which may be modified by parties, converting some STCs from "non-modifiable" to "may be modified" (or vice versa), or changing the specific language for a particular non-modifiable STCs. Parties have many ways to propose changes in STCs, which we discuss more below. We do not, however, interpret the law to permit us to abandon STCs altogether.

In this context, we now address each specific requested relief. In summary, first we clarify that an RPS-obligated LSE may propose changes to STCs in any reasonable forum, and we provide guidance on that process. Second, we affirm that there are no restrictions on parties' negotiations of STCs identified as "may be modified by parties," but decline to authorize a blanket lifting of all restrictions relative to designated STCs. Finally, we affirm our recent decision wherein we state that an applicant may file each RPS proposed contract by AL for Commission review, but Energy Division may reject an AL or propose that an AL be converted to an application.

5.1. Consideration of STCs in Annual RPS Procurement Plan Review

Petitioners first requested relief is that an IOU may propose changes to STCs as part of the annual review of its RPS procurement plan, with subsequent Commission adoption, rejection or modification of each plan. (Old § 399.14(b), new § 399.14(c) effective January 1, 2007.) In support, petitioners point out that the Commission encourages IOUs to incorporate "lessons learned" with each new solicitation, and changes to STCs over time could be part of each IOU's lessons learned.

In very limited cases, this approach is one option going forward. For the reasons explained below, we expect to reject proposals to change STCs that are made in annual plan reviews. Rather, we expect parties to use one of the preferred options discussed below, absent particularly compelling reasons otherwise (e.g., a simple and non-controversial change). The reasons must include an explanation why use of a preferred approach is inappropriate or unreasonable.

We are reluctant to use an annual plan review, absent compelling reasons otherwise, for the following reasons. A proposal to change a STC, including a proposal made in the annual procurement plan review, requires that the issue be made clear. Otherwise, we agree with CEERT that a proposed change to a STC may not be adequately brought to the attention of parties and the Commission. To accomplish this, at least two things are required. First, a party must clearly identify the specific STC at issue, make a concrete proposal (e.g., provide

proposed replacement language), and support the change.[6] Second, all affected parties must be noticed, with opportunity to comment, and parties must have the opportunity to address, with the Commission having the option to consider, whether the proposed change should be applied to one LSE, some LSEs, or all LSEs.

The annual RPS procurement plan review is not the best forum for this effort because review of annual RPS procurement plans is currently for only a subset of LSEs (i.e., the large IOUs). Such annual review is unlikely to ever simultaneously include all LSEs.[7] As a result, it would typically be undesirable to consider generic changes to STCs that may apply to all RPS contracts.

We also share CEERT's concern that presenting a proposed change to a STC in an annual review may fail to permit an equal opportunity for a counterparty to seek similar relief. There will likely be dozens of important issues presented in the review of an annual plan and counterparties typically have limited resources to devote to any particular proceeding. We know parties must prioritize issues and allocate scarce resources to only the highest priority issues in each proceeding.[8]

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[6] This includes changes to either the initial language for a modifiable STC, or language for a non-modifiable STC, as further explained later in this decision. Clear identification should include comparison of the proposed language to the language adopted in D.04-06-014, and any other subsequently approved language.

[7] It would not include ESPs and CCAs because we do not review their procurement plans. (D.06-10-019, pp. 12, 18.)

[8] A party with limited resources might be able to do nothing more than ask that the issue be moved to another proceeding, where it can devote more time and resources to a particular STCs' matter. Nonetheless, this would give the Commission an

Footnote continued on next page

There are at least two better approaches, however. One is a petition for modification of D.04-06-014. This would include the advocate specifically identifying the STCs to be changed, making a concrete proposal, and offering support, with service of the petition on the same service list used to consider and adopt the original STCs. This would ensure that all parties have notice, have an opportunity to participate, and are given the chance to recommend whether or not the specific proposed change should be to one, some or all LSEs. It also provides reasonable opportunity to allocate scarce resources to certain issues that might be lost in a proceeding with potentially dozens of issues.

A second preferred approach is through the opportunity provided by the Scoping Memo in the successor rulemaking to this proceeding (R.06-05-027) or a successor RPS proceeding. For example, the August 21, 2006 Scoping Memo in R.06-05-022 specifically identified STCs as an issue upon which parties should comment, and invited comment not only on STCs but also other potential program improvements. (August 21, 2006 Scoping Memo, Attachment A, Issue 3 at pp. 6-9, and Issue 7 at pp. 13-15.) Parties have filed comments and replies. Parties may still file comments late (with a motion for acceptance late). Alternatively, parties may move for an amended scoping memo (or a new scoping memo in a later phase) to again address STCs within R.06-05-027. Finally, STCs might be addressed in a successor RPS proceeding, with parties recommending further consideration of STCs as one issue to be included in the Scoping Memo there, as appropriate.

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opportunity to address the STCs in the annual review or, if the party's request is compelling, to defer the issue to a later review.

There may be other procedural approaches that parties might find appropriate over time.[9] We do not unreasonably limit the ways that such changes may be presented to us for our consideration. In order to be compelling and meet the proponent's burden of proof, however, in each instance the proposal must clearly and unambiguously do at least two things: (1) identify which of the 14 STCs is at issue, state the proposed change (e.g., proposed alternative language), and include proponent's support for the proposal, and (2) allow for notice and opportunity to comment by all affected LSEs and interested parties, plus provide the Commission with information on whether or not to apply the change to one, some or all LSEs. We expect to deny proposals to change STCs that are made in an annual plan review, and expect parties to use a preferred (or equally efficient) approach, absent compelling reasons otherwise.

5.2. Lift Restrictions on Negotiation of Designated STCs

Secondly, petitioners request elimination of restrictions on negotiations of designated STC. In support, petitioners say such restrictions are counterproductive and unnecessary. In light of experience gained in negotiations with developers, petitioners say the time to allow greater flexibility is now. For the reasons stated below, we decline to authorize a blanket lifting of all restrictions on designated STCs, but recognize (as part of the discussion below

[9] For example, an interested person may petition the Commission to adopt, amend, or repeal a regulation. (§ 1708.5.) An interested person may contact the Chief ALJ and seek authorization to use the Commission's Alternative Dispute Resolution processes (which may be used in formal proceedings or other appropriate disputes, as determined reasonable by the Chief ALJ). (Resolution ALJ-185.)

of the third requested relief) that individual negotiations of STCs may be necessary in limited cases.

5.2.1. Reasonable Flexibility Balanced With Consistency and Transparency

We have always agreed that reasonable flexibility is desirable. For example, in 2003 we declined to require a fully conformed, standardized contract. That is, most of each contract is fully negotiable and modifiable.

After further deliberations, in 2004 we determined to only require 14 STCs, with many of those 14 STCs modifiable. Of the "may be modified" STCs, we adopted "starting" or initial language consistent with the proposal of CEERT Parties. This initial language provides context and guidance, but parties are free to negotiate something different. We have not placed restrictions on parties' negotiations relative to these terms, and none are adopted here. The only limitation is that the final contract must include something on the few required terms (e.g., performance standards, product definitions, penalties, defaults, credit terms, prevailing wages). Thus, considerable flexibility is already provided.

Petitioners' request to lift restrictions on negotiations makes sense only with regard to the Commission's adopted (a) initial language for the modifiable STCs and (b) specific language for the non-modifiable STCs. Regarding starting language for the modifiable STC, we decline to authorize a blanket lifting of restrictions on use of the adopted initial language in the model contracts. As said above, the initiating language provides context and guidance. Parties may then negotiate something different. A party (such as SCE) who believes it cannot subscribe to the model contract language should seek to change that language

via a preferred approach (e.g., petition for modification, comments on a stated issue in a scoping memo).

We similarly decline to authorize blanket lifting of the specific language for the non-modifiable STCs. Of 14 STCs in D.04-06-014, there are only seven non-modifiable STCs, with an additional two non-modifiable only in part. As we said as recently as a few months ago, it is obvious that all contracts for RPS-eligible generation must contain some basic terms. We initially adopted non-modifiable STCs to encourage statewide consistency and transparency, promote an integrated contract where all terms and conditions work together, avoid an unreasonable mix-and-match of disparate terms, and avoid rendering meaningless the concept of "standard." These goals remain valid today. (D.06-10-019, p. 32-33.)

The non-modifiable terms are standardized for sound, specific reasons. For example, STC 1 (CPUC Approval) is standardized and non-modifiable because this is an area wherein the Commission cannot, and does not, delegate its authority to parties.[10] STC 5 (Contract Term) directly complies with, and implements, the statute.[11] STC 6 (Eligibility) ensures that the RPS generating units comply with California Energy Commission requirements, and the output

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[10] March 8, 2004 Joint Ruling, p. 6; D.04-06-014, pp. 5, 13.

[11] For example, the law states: "In soliciting and procuring eligible renewable energy resources, each electrical corporation shall offer contracts of no less than 10 years in duration, unless the commission approves of a contract of shorter duration." (§ 399.14(a)(4).) STC 5 provides for contracts of no less than 10 years duration but also permits contracts for shorter periods: "Non-standard delivery shall be for a period of ____ years." (D.04-06-014, Appendix A, p. A-9.) If non-standard delivery is selected, then, consistent with law, STC 5 provides that: "Parties need to apply to the CPUC justifying the need for non-standard delivery." (Id.)

qualifies under the RPS legislation.[12] STC 16 (Assignment) ensures that certain obligations are maintained to protect parties and ratepayers over the term of the agreement.[13] STC 17 (Applicable Law) ensures that the laws of California control.[14]

Moreover, as stated above, we agree with CEERT that the RPS legislation requires that we adopt STCs. We do so in a limited way, but do not change our interpretation or application of the law. Rather, we decline here to permit unlimited negotiations between LSEs and developers in a manner inconsistent with our implementation of STCs under law.

5.2.2. Petitioners' Support for Requested Relief

Petitioners make several assertions in support of their requested relief. Petitioners, however, fail to provide compelling evidence in support. In particular, petitioners fail to support factual allegations with specific citations to the existing record or to matters that may be officially noticed, and fail to provide a declaration or affidavit supporting allegations of new or changed facts, as required by our Rules. (Rule 16.4(b).)

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[12] This makes a uniform and consistent product to (a) protect parties and ratepayers under this program (e.g., from products being traded as RPS when they are not) and (b) promote efficient market operation and trading.

[13] Absent this term, for example, ratepayers may end up paying too much in early years of the contract, and not have the benefit of lower priced payments in later years of the contract.

[14] This is reasonably consistent with the law (§ 399.11). That is, this is an RPS Program for the State of California (not another state); the transaction applies to California entities, and RPS results in California; and the program is jointly implemented by the California Public Utilities Commission and the California Energy Commission (two agencies of the State of California).

For example, petitioners allege:

> "RPS contracting experience to date has already shown that a non-negotiable, cookie cutter approach to even a selected group of standard terms and conditions does not serve RPS goals well, as rigid provisions cannot fit the increasingly diverse technology, project, and financing needs of otherwise-viable RPS projects." (Petition for Modification, p. 5.)

Petitioners also claim that more flexibility is needed "in light of the experience IOUs have gained in their negotiations with RPS developers." (Petition for Modification, p. 7.)

Petitioners do not identify particular contracting, negotiating or other experience that has produced the alleged effects. Petitioners do not identify the particular STC at issue, state the specific RPS goals that are not being served, nor show how the STCs fail to serve those goals. Petitioners also fail to show which exact STC provisions do not fit the needs of a specific technology, project or type of financing, nor that the affected RPS project, if any, is truly otherwise viable.

Petitioners claim that:

> "In the face of [rigid, non-negotiable] terms, the time required for renewables contracting has been extended, rather than shortened, and the viability of RPS projects that could further all of the goals of the RPS program has been needlessly threatened." (Petition for Modification, p. 7.)

Petitioners do not identify any project subject to such delay, quantify the delay, or show that the delay was material. They do not identify a project whose viability has been threatened, nor demonstrate that such threat was real or material. They do not show which specific RPS goals have been threatened, if any, nor by how much. Neither do they show the degree or materiality of how all RPS goals are compromised.

Petitioners state:

> "The value of standard terms and conditions, and particularly non-negotiable provisions, must be considered within the overall goals of the RPS program. It has become clear to the Petitioners that standard terms and conditions should be optimized based on experience, and that the cost of non-negotiable terms outweighs any perceived benefit." (Petition for Modification, p. 7.)

Petitioners do not quantify the value of STCs, nor discuss the specific goals for comparison with that value. Petitioners provide no evidence that costs of non-modifiable terms outweigh benefits.

Nonetheless, we fully agree that STCs should be optimized if they are not now optimal. Current STCs are integrated and work together, and are adopted based largely on the proposal of CEERT Parties. Petitioners' unsupported assertions here do not convince us STCs are now non-optimal. We discuss above two preferred ways to re-optimize STCs, to the extent necessary or desirable, and are open to any procedurally efficient mechanism. Relief is reasonably available, but not by a blanket lifting of all restrictions relative to designated STCs.

Petitioners assert that:

> "Experience has shown that other changes are necessary as well, such as modifications to the 'standard' assignment clause, which counterparties have informed Petitioners is currently commercially unacceptable and are not consistent with the approach to assignment and the restrictions on governmental limitations of such assignments in Sections 9406(d) and (f) of the Uniform Commercial Code." (Petition for Modification, pp. 8-9.)

Petitioners do not identify the counterparties, show how or why the assignment term is commercially unacceptable to those counterparties, claim that the assignment term is commercially unacceptable to petitioners, support how or why the assignment term might be inconsistent with some provisions of law, address benefits to ratepayers provided by the assignment term, nor discuss how those benefits may be offset by greater benefits to ratepayers if petitioners' proposed relief is adopted.

5.2.3. Specific Reasons Identified in Support

Petitioners also discuss two reasons previously identified in support of restricting negotiations on designated terms, along with a current reason relative to changing law.

5.2.3.1. Parens Patrie

Petitioners say:

> "First, the need for a 'parens patrie' approach has been alleged, protecting RPS developers from agreeing to terms that they might not like. Experience has shown that sellers neither need nor want this protection; they prefer greater flexibility to tailor contracts to their specific needs. Furthermore, in the acknowledged 'sellers' market' in California [23], which can be expected to continue at least until RPS-obligated entities have attained the 20% RPS target and achieved 'steady-state,' sellers have appreciable negotiating leverage."

> "[23]: Energy Daily, 'Public Power: Market Mechanisms Distort Clean Energy Prices,' at 3 (Jan. 29, 2007) (quoting Jan Schori, general manager of the Sacramento Municipal Utility District ('SMUD')." (Petition for Modification, p. 7.)

We are not persuaded. CEERT claims that a concern about unequal bargaining power in negotiations between a single renewables developer and a large utility may remain. We agree with CEERT.

That is, we have insufficient data to conclude whether or not the previously unequal bargaining power that led, in part, to the STCs adopted in 2004 is now sufficiently balanced or equal in some (if not all) cases to fully remove all restrictions on negotiations.[15] The protection we provide via STCs is minimal. We are not convinced this minimal protection is unwarranted or unneeded. Most importantly, we are not convinced it is a hinderance. That is, nearly the entire model contract is subject to negotiation between parties. Many of the limited STCs are fully negotiable once parties consider the initial or starting language. Moreover, as explained further below, we do not foreclose the option of changing an otherwise non-modifiable STCs on an individual contract

[15] For example, we are separately considering standardized tariffs and/or contracts for limited RPS projects pursuant to Assembly Bill 1969. Perhaps in theory, standardized tariffs and/or contracts for a subset of developers who may need some protection (due to small size or other factors) may permit eliminating STCs for all other RPS contracts. Even if this is the case, however, it may be that contracts for all other developers (e.g., larger projects) should still provide for a reasonably standard product or other standardized parameters (e.g., to make market trading efficient, and ensure reaching RPS Program goals). Thus, there may or may not still be a need for some STCs, even if less than 14.

basis when considered via an AL or application. We only reject a blanket lifting of all restrictions on negotiating designated terms.

We also consider STCs in a larger context, and take this into account with respect to the claim of a seller's market. Our duty is not only to balance the interests and reasonably protect each party in the transaction. It is also to balance the interests and reasonably protect ratepayers, achieve RPS Program goals (e.g., 20% by 2010), and fulfill the overall public interest. The public interest is of vital importance, and we specifically cited that interest in support of our adopting the STC proposal of CEERT Parties, with modifications. (D.04-06-014, pp. 4-5.)

We ultimately seek to reach a market structure and outcome that is just and reasonable, balances competing interests, and is in the overall public interest. A minimal, limited set of STCs produces this overall balance. Moreover, it protects ratepayers by, for example, maintaining Commission jurisdiction, creating a reasonably standardized product for efficient market trading and operation, and helping to promote a reliable and safe industry.[16] Whether the market at a particular time might favor buyers or the sellers does not disturb the role of a limited set of STCs in achieving this balance.

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[16] STC 1 (CPUC Approval), for example, ensures our jurisdiction. General Order 167 (Enforcement of Maintenance and Operation Standards for Electric Generating Facilities) provides for Commission oversight of the maintenance and operations of certain powerplants. Individually, and together, these items provide an important basis for Commission oversight, including setting standards, and enforcing rules and regulations, to fulfill the Commission's duties to see that California has a reliable electricity industry that protects public health and safety in the use of essential powerplant facilities. (See, for example, D.05-08-038, p. 2.)

5.2.3.2. Consistency for RECs

Petitioners cite a second reason in support of restriction on negotiation of designated terms:

> "Second, consistency has historically been raised as an important element of RPS contracts, presumably in anticipation of the development and approval Renewable Energy Credit ('REC') system. As the Commission is aware, a regional tracking system, the Western Renewable Energy Generation Information System ('WREGIS'), is well underway, and the issue of whether the Commission will adopt RECs for compliance purposes is slated for consideration in R.06-02-012. [Footnote deleted.] If consistency of contract terms is believed necessary to establish a tradable REC product, it deserves consideration when it is truly material, in the context of the REC proceeding. The potential value of consistency for any other purpose is unlikely to outweigh the substantial threat of harm from inflexibility and resulting delays in project approval, as discussed herein." (Petition for Modification, p. 8.)

We are not persuaded. Petitioners provide no evidence to support the above assertion that the value of consistency is unlikely to outweigh the harm from inflexibility. Petitioners offer no specific data on project approval delay and whether such delay, if any, was or is material. More importantly, we do not agree that consistency should be deferred. Petitioners correctly point out that development of WREGIS is well underway. It would be unreasonable to abandon consistent treatment of RECs now when there is every reason to believe WREGIS will be operational reasonably soon.

5.2.3.3. Consistency with Law

In additional support of their requested relief, petitioners assert that each STC must be consistent with law, the law applicable to RPS contracts is subject to change, and current law in some cases conflicts with existing STCs. Petitioners cite two examples.

First, petitioners say the California Supreme Court has limited counterparties ability to waive rights to a jury trial.[17] Petitioners contend the law now conflicts with a STC, and argue that the solution is to remove all restrictions on negotiating designated STCs.[18] We disagree.

Even if it is true that a conflict exists between a STC and current law, petitioners fail to show why they could not have filed—and did not file—a petition for modification when the Supreme Court issued its decision. Based on the new law there may or may not be merit in modifying the applicable STC. If modified, there may be merit in requiring that the new term be one of the few STCs that parties may not further modify. Alternatively, there may or may not be merit in providing "starting" language with parties left to negotiate individual specifics. We do not jump to the conclusion recommended by petitioners, however, that any change in law should result in parties having complete freedom in contract negotiation of each and every STC. Rather, we continue to apply a limited STC structure consistent with our obligations under law.

Second, petitioners point out in support of their proposal that there are new legal requirements in SB 107, along with new greenhouse gas and other environmental requirements of law, and that the law will change again in the future. Petitioners conclude that restrictions on negotiating designated STCs should be removed. We disagree.

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[17] Petitioners cite Grafton Partners v. Superior Court (PRICEWATERHOUSECOOPERS L.L.P.), 36 Cal. 4th 944 (2005). (Petition for Modification, p. 8, footnote 26.)

[18] Petitioners do not cite the STCs.

Even if it is true that STCs conflicted with SB 107, these items were reasonably addressed during review of the 2007 RPS procurement plans by seeking parties' proposals and comments.[19] It did not require or justify elimination of restrictions on negotiations of designated STCs. This is similarly true of greenhouse gas and other environmental law now or in the future.

5.3. RPS Contracts Should be Approved By AL Process

Petitioners also request clarification that all RPS contracts may be submitted by AL for approval through a Commission resolution. In support, petitioners assert that the AL process is the most appropriate and expeditious way to consider RPS contracts, including those with STCs which vary from those currently designated as non-negotiable. We generally agree, and affirm our recent guidance which maintains the status quo for now.

RPS contracts may continue to be submitted for Commission consideration by AL, consistent with existing Commission orders. Energy Division will screen and separate out contracts that require special attention consistent with its existing and ongoing administrative and implementation responsibilities. (D.07-02-011, pp. 49-50.) That includes Energy Division rejecting what we call "problematic" advice letters (e.g., raising material issues of fact or law). (D.05-01-032, p. 8.)

[19] In a reasonably speedy and organized way we modified the model contracts to reflect several terms of SB 107 including, for example, a new term for RECs, a modified term for Environmental Attributes (now Green Attributes), and contract language on release of project information consistent with new deadlines.

More specifically, petitioners state that changes to STCs should be subject to approval through the AL process. Petitioners assert that use of the AL process will support continued progress toward RPS goals without unmerited delay or undue strain on Commission and party resources. Petitioners argue that time is of the essence for RPS developers and financiers. The prospect that changing terms will divert approval from the AL process to a longer application process "is simply commercially unacceptable for many RPS developers and financiers." (Motion, p. 10.)

We agree in the following context. Parties may negotiate individual changes and present those changes by an AL for Commission review of the contract. An applicant always has the burden of proof, of course, and the filer of the AL should provide sufficient support, as needed, to show the AL meets relevant tests and should be approved. Energy Division may reject ALs which raised disputed issues of fact, contested issues of law, material public policy concerns, or other matters that require additional attention not best accomplished in an AL process. Also, Energy Division should, as quickly as reasonably possible, propose a resolution denying the AL's requested action or relief when applicant fails to meet its burden of proof.

For the reasons stated above, we expect parties to bring generic changes to our attention via one of the preferred methods, not via an AL. Those are changes either to (a) the "starting" language in a STC which is modifiable, or (b) the language in a STC that is non-modifiable. The preferred approaches are by petition for modification or identified scoping memo issue. Either preferred approach promises to meet obligations for notice and opportunity to comment, and will permit a speedy and efficient consideration of the issues. In limited

cases, however, individual contracts with unique STCs may be negotiated and presented by AL.

We are not, however, convinced by petitioners to completely foreclose the use of an application or other process, and rely entirely on the AL scheme. Petitioners fail to provide compelling evidence in support of their request (e.g., identify the number of developers and financiers who find an application process unacceptable; convincingly show that the affect, if any, is material); cite to the record; or include a declaration or affidavit. Moreover, the application process does not necessarily take any more time than the AL process, particularly for a complicated or complex AL. Finally, California's electricity ratepayers and citizens have an interest in the RPS industry producing a reliable, safe product at a reasonable cost. We must balance the interests of all parties and optimize the public interest. We believe we have reached the right balance with our adopted process (which largely employs use of ALs, but uses an application or other process to consider some matters when necessary or appropriate).

Petitioners argue that changes to non-modifiable STC must be considered by AL because the "uncertainties inherent in the application process can substantially reduce the likelihood of RPS success and increase the costs of RPS contracts." (Motion, p. 10.) Delays typically result in an increase in costs and risks, according to petitioners, which must be offset by increased prices. Petitioners assert that unless changes in non-modifiable STC are considered by AL, developers may offer their often-scarce renewable equipment and financing to other, more accommodating markets, to the substantial harm of California RPS program and success.

This is a harm that we balance with the risk of an array of contracts with "mix-and-match" provisions. We believe we have reached the right balance.

While we do not provide a blanket lifting of all STCs, we nevertheless do not foreclose parties from agreeing to one or more modified STCs in some limited cases, and submitting the resulting contract by AL for our consideration. We would generally be surprised if such change in one or more STCs did not raise a material issue of fact or law, or an important policy issue. If so, in most cases we would expect Energy Division to reject the advice letter, with the recommendation that the matter be resubmitted as an application. If a material issue of fact or law, or policy issue, is not raised, and the contract is otherwise reasonable, the contract may be processed via AL for Commission consideration by resolution.

We expect this approach to be used in limited cases, but do not prohibit this approach altogether. We may reconsider this, and in the future restrict or withdraw use of this approach, if it is used excessively or unreasonably, and begins to produce results that substantially deviate from our goals of having statewide consistency and transparency, plus an integrated result wherein all terms and conditions work together to promote a reasonably uniform market.

6. Changes to STC in Existing Model Contracts

Also before us is the issue of how to consider changes, if any, made to STCs in model contracts accepted in annual procurement plan reviews for 2005 and 2006. This is before us now as result of our consideration of the 2007 Procurement Plans. We adopt the same result that we adopted in 2007. (D.07-02-011, pp. 50-52.)

That is, we decline to approve such changes retroactively. Previously accepted RPS procurement plans have been accepted without judgment on terms not specifically raised by applicant or parties, and/or addressed in the Commission's decision. Rather, these plans were accepted on the basis of having

been consistent with all prior orders (including D.04-06-014) unless specifically determined otherwise. Nonetheless, as we also determined in 2007, an LSE may proceed with modified terms, but the LSE has the responsibility, within flexible compliance rules, to reasonably administer and implement the RPS program to meet RPS targets. (D.07-02-011, p. 52.)

We clarify that the approach adopted above (of potentially considering certain changes in future annual procurement plan reviews) does not by itself imply approval of changes, if any, made in STCs in prior annual procurement plans. Rather, as also stated above, consideration of changes requires meeting at least two tests.[20] These tests have not been met in prior annual procurement plan reviews.

For example, each applicant in each annual review of a procurement plan was specifically expected to identify the important changes, if any, in the current plan from the prior plan.[21] No changes in STCs were identified, and none were supported by an applicant. We considered procurement plans on the basis that they were consistent with prior Commission orders relative to STCs, including as stated in D.04-06-014. We neither ordered nor accepted any deviations from the STCs, with one exception. The one exception was changes resulting from SB 107

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[20] These tests are: (1) clear identification of the STCs at issue, concrete proposal, and support for a change, and (2) opportunity for notice and comment, and to clearly consider whether the change should be applied individually or generically to some or all LSEs.

[21] For example, each applicant was required as part of the review of the 2007 procurement plans to present a complete procurement plan, including a statement which summarized changes from the prior procurement plan. Each applicant was also required to present anything else necessary for a full and complete presentation of its plan. (See August 21, 2006 Scoping Memo, Attachment C, pp. 2-3.)

and related law. This was specifically identified by the ALJ, and a record created for consideration of those changes.

Petitioners are correct that we adopted limited STCs in 2004 for the purpose of:

> "a 'year one' contract to enable the RPS solicitation to move forward, and we expect that the contract language will become more refined as the parties and the Commission gain further experience." (D.04-06-014, p. 6.)

Petitioners are also correct that this could have meant permitting changes as early as the next contracting cycle, such as in 2005. We disagree with petitioners, however, that this meant changes in a non-integrated, mix-and-match fashion, rendering meaningless the fundamental idea of some limited standardization.

Thus, changes, if any, made to STCs in plans for 2005 and 2006 are subject to the same treatment provided relative to the 2007 procurement plan. When a specific proposed RPS contract is accepted by Commission resolution or decision, however, the terms and conditions of that contract are reasonable (including modified STCs), and the costs recoverable from ratepayers, to the extent provided in the resolution or decision, subject to reasonable contract administration by the LSE.

7. Green Attributes

In its response, IEP now asserts that the standard definition of Green Attributes adopted in D.07-02-011 stretches and expands the prior definition of Environmental Attributes to an even greater level of complexity than already exists, and invites inconsistency that can only impair and impede conclusion of RPS contracts. IEP recommends that the Commission direct parties to develop

business terms related to Green Attributes that are mutually acceptable, and submit such terms and conditions for the Commission's consideration and approval. IEP concludes that the "real-world, business experience of the parties, employed in this manner, will help minimize the probability that the resultant standard language serves as a barrier to development and investment." (Response, p. 3.)

We have already provided reasonable opportunity for parties to do this. By ruling dated November 9, 2006, the IOUs were directed to address matters related to SB 107, including the new definition of RECs. Responses were filed by PG&E, SCE and San Diego Gas & Electric Company, including a proposal to change the definition of Environmental Attributes. Comments and reply comments were filed by parties, including IEP, as necessary and reasonable. IEP's proposal for a Commission order directing parties to seek mutually acceptable business terms and make a joint proposal would be burdensome on parties (especially those who already actively and timely participated), is unreasonable, and is rejected.[22]

8. Conclusion: Efficient, Focused, Streamlined Efforts

Petitioners and IEP assert that attaining RPS goals will require the efficient, focused and streamlined efforts of RPS-obligated LSEs, RPS developers

[22] Parties, including IEP, have several procedural vehicles to seek further relief even without a Commission order directing parties to do further work. For example, IEP can circulate to all parties its own proposed alternative language for Green Attributes, and invite others to co-sign a joint petition for modification. Or, IEP may file a motion with the assigned Commissioner for an amendment to the Scoping Memo to again consider this topic, along with workshops, comments, replies, or other procedural vehicles it may propose.

and the Commission, and that changes should be identified and made that will result in more RPS contract success. We agree.

We have adopted very limited non-modifiable STCs. Everything else is negotiable. We expect parties to present changes in "starting" language for modifiable STC, plus alternative language for non-modifiable STCs, in a procedurally efficient, focused and streamlined way. Preferred approaches to presenting and considering such changes are by a petition for modification or an identified issue in a Scoping Memo. Parties may also propose and use other vehicles that are efficient, focused and streamlined. The requested relief of essentially abandoning standardization altogether, however, is unreasonable and is not adopted.

Finally, parties do not identify specific language in D.04-06-014 that must be changed, nor "propose specific wording to carry out all requested modifications of the decision," as required by our Rules. (Rule 16.4(b).) With the clarifications provided herein, we find no language in D.04-06-014 which needs modification. [23]

[23] To the extent the petition is granted, CEERT contends we must not only modify language in D.04-06-014 but also our more recently adopted D.07-02-011. CEERT reports, for example, we specify in D.07-02-011 that certain changes to non-modifiable STCs must be submitted by application, and such language, if retained, would be inconsistent with a grant of the instant petition. We disagree. D.07-02-011 gives some examples wherein Energy Division may reject an AL or recommend conversion to an application. The examples are not mandatory. Moreover, the language in this order adequately clarifies the range of ways we may consider changes to STCs, along with certain preferred ways. Based on our review and the clarifying language in this order, we are not persuaded that any specific change is needed to language in either D.04-06-014 or D.07-02-011.

9. Comments on Proposed Decision

On May 22, 2007, the proposed decision of ALJ Mattson was mailed to the parties in accordance with § 311 of the Pub. Util. Code and Rule 14.2(a) of the Commission's Rules of Practice and Procedure. Comments were filed on _____ and reply comments were filed on _____.

10. Assignment of Proceeding

Michael R. Peevey is the assigned Commissioner, and Burton W. Mattson and Anne E. Simon are the assigned ALJs for this proceeding.

Findings of Fact

1. Even though filed more than one year after D.04-06-014, the petition is timely given that process issues (a) have matured over time, and (b) were raised in 2006 in the context of our review of the 2007 RPS procurement plans.

2. Parties and the Commission have been continuously developing, considering and modifying STCs since 2003.

3. The adopted STCs are an integrated set of terms and conditions intended to provide statewide consistency and transparency, promote an integrated contract where all terms work together, avoid an unreasonable mix-and-match of disparate terms, and avoid rendering meaningless the concept of "standard."

4. Adopted STCs include several that have initial "starting" language which may be modified by parties, and some that may not be modified.

5. Reasonable flexibility in RPS contracting, balanced with reasonable consistency and transparency, is desirable.

6. Petitioners' requested relief is not supported by evidence, and petitioners do not cite to the record or to matters that may be officially noticed, nor do they include a declaration or affidavit supporting allegations of new or changed facts.

7. Reasonable flexibility is provided in the current RPS contracting structure, including the Commission's adoption of limited STCs, and no reasons are presented which convincingly demonstrate a blanket lifting of all restrictions on negotiations of designated STCs is a reasonable alternative.

8. Each RPS contract may continue to be presented for Commission consideration by AL.

Conclusions of Law

1. The petition for modification should be granted with respect to providing clarification and guidance, and denied in all other respects.

2. An LSE may propose changes to STCs (either the "starting" language for a STC that may be modified, or the language of a non-modifiable STC) in any reasonable forum, with certain forums preferred and expected to be used (e.g., petition for modification, comments on Scoping Memo issue regarding STCs), but in any forum at least two things are necessary (i.e., (i) clear identification of STC at issue, concrete proposal, support for change and (ii) notice and opportunity to comment, with consideration of whether the result applies to one, some or all LSEs).

3. Absent compelling reasons to consider potential changes to STCs in an annual RPS plan review, proposals to change STCs must be presented for consideration using one of the preferred approaches.

4. All contracts for RPS-eligible generation must contain some basic STCs, a blanket lifting of all restrictions on negotiation of designated STCs is unreasonable, and unlimited negotiation of each and every non-modifiable STCs is inconsistent with the Commission's interpretation and implementation of STCs, as required under law.

5. Each RPS contract may be submitted for Commission consideration by AL, but Energy Division should reject ALs that present a material issue of fact or law, a material issue relative to public policy or the public interest, or otherwise present an issue which justifies further scrutiny which is not addressed best using the AL process.

6. Parties may agree to a change in an otherwise non-modifiable STCs in an individual contract and submit the contract by AL for Commission consideration, but such cases should be limited and should be the exception, not the rule.

7. RPS procurement plans in 2005 and 2006 were accepted by the Commission without judgment on terms and conditions not specifically identified and addressed by applicant or parties; accepted on the basis that they conformed to all existing Commission orders, including D.04-06-014; and accepted with the LSE retaining responsibility, within flexible compliance rules, to reasonably administer and implement the RPS program to meet RPS targets.

8. A specific proposed contract, including modified STCs (if any), is reasonable, and its costs are recoverable from ratepayers, to the extent provided in the Commission's resolution or decision approving a particular contract, but the LSE remains responsible for reasonable contract administration.

9. This order should be effective today to provide necessary clarification and guidance, and assist LSEs and the state continue to work toward RPS program targets, without delay.

O R D E R

IT IS ORDERED that:

1. The February 1, 2007 petition for modification of Decision 04-06-014 jointly filed by Pacific Gas and Electric Company and Southern California Edison Company is granted with respect to providing clarification contained in this order, and denied in all other respects. In particular:

   a. A load serving entity (LSE) may propose changes to standard term and conditions (STCs) in any reasonable forum, with certain forums preferred and expected to be used as explained herein (e.g., petition for modification, comments on an identified scoping memo issue), and subject to satisfying initial threshold tests as described herein (e.g., clear identification, proposal, and justification; notice; opportunity to comment; opportunity to address whether the proposed change is for one, some or all LSEs). The periodic review of a renewables portfolio standard (RPS) procurement plan may be used to consider changes to STCs, but only if there are particularly exigent circumstances or efficiencies in using the annual plan review.

   b. The request for a blanket lifting of restrictions on the use of initial language for modifiable STCs, and negotiation of non-modifiable STCs, is denied.

   c. An LSE may present each RPS contract for Commission consideration by advice letter. Energy Division should, absent a compelling reason otherwise, reject an advice letter which raises a material issue of fact or law, an important public policy or public interest issue, or otherwise justifies further deliberation by the Commission beyond what is reasonably accommodated through the advice letter process. In limited cases, an applicant may propose a change to a STC for an individual proposed contract using the advice letter process, but those cases should be the exception, not the rule, absent compelling reasons otherwise.

2. Rulemaking 04-04-026 is closed.

This order is effective today.

Dated _____, at San Francisco, California.

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a copy of the Notice of Availability to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the copy of the Notice of Availability is current as of today's date.

Dated May 22, 2007, at San Francisco, California.

/s/ FANNIE SID
Fannie Sid